

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

AF/IFW

In re the Application of: **NAGAO, Katsuyoshi, et al.**

Appeal No: **To Be Assigned**

Serial No.: **10/509,673**

Group Art Unit: **3761**

Filed: **October 8, 2004**

Examiner: **WIEST, Philip R.**

P.T.O. Confirmation No.: 6132

For: **MULTIPLE-CHAMBER MEDICAL CONTAINER AND BAG FOR ENCLOSING
SAME**

REPLY BRIEF UNDER 37 C.F.R. §41.41

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 29, 2010

Sir:

In response to the Examiner's Answer dated June 10, 2010, the following remarks are respectfully submitted.

REMARKS

In reply to the Examiner's Answer of June 10, 2010, Appellant maintains the arguments presented in the Appeal Brief filed on July 22, 2005, and here responds to the Examiner's arguments presented in the Examiner's Answer. In accordance with 37 CFR 41.41(a)(2), no new or non-admitted amendment or new or non-admitted affidavit or other evidence is included herein. Appellant further submits that the present Reply Brief only responds to the Examiner's arguments, and no new issue is raised herein (see 37 CFR 41.43(a)(1)).

Appellant here responds to the Examiner's Response to Arguments in section (10) of the Examiner's answer:

(1) At the top of page 7, the Examiner summarizes Appellant's argument (1) from pages 16-18 of the Appeal Brief; that Larkin's device does not have a structure corresponding to the "partitioning seal portion."

The Examiner indicates that this is not persuasive, and discusses Fig. 4 of Larkin. The Examiner refers to Larkin's reference numeral 43 as the "partitioning seal," stating that this is formed by separably bonding opposing inner wall surfaces of sheets 36 and 37 of the container body. The Examiner states: "This structural arrangement meets the limitations of claims 1 and 3."

In the Appeal Brief, Appellant had argued that claim 1 requires **both** a "bonded portion" and a "partitioning seal portion," and that "seal area 43" in Larkin meets the limitation of the "bonded portion." Appellant refers to the comparison of Fig. 4 of Larkin to Fig. 2(a) of the present

application on page 18 of the Appeal Brief. Note that claim 1 recites: “the partitioning seal portion is formed by formed by separably bonding opposing inner wall surfaces **of the container body.**” Note also that the container body **has multiple chambers** (see claim 1, lines 2-3), and therefore the “container body” must represent the body outside of the multiple chambers.

By contrast, “seal area 43” in Larkin represents only a seal of walls 36 and 37, where the antibiotic powder is placed (see Larkin’s Fig. 4 and column 3, lines 40-41). This is only an **interior** chamber in Larkin, and **cannot represent the container body of claim 1**. That is, this cannot be the container body because this chamber in Larkin does not have multiple chambers itself (see claim 1, lines 2-3).

Therefore, Appellant respectfully submits that **the Examiner’s argument ignores limitations recited in claim 1**. Appellant’s argument similarly applies to claim 3 (see page 21 of the Appeal Brief).

(2) At page 9, line 5, the Examiner addresses Appellant’s argument (2), that Larkin’s device has only one structure corresponding to a chamber for containing medicaments, while claim 1 requires “multiple” chambers (see Appeal Brief at pages 16, 19-20 and 22). The Examiner states:

“It is important to note that appellant does not claim two chambers that are configured to contain medicaments and configured to mix with one another. Appellant’s claim language of “multiple chambers for containing medicaments” means that Larkin must merely teach a plurality of chambers that are CAPABLE of containing medicaments. In this case, Larkin teaches a container system comprising

a plurality of chambers (between sheets and between sheets 37 and 18) that contain or are fully capable of containing a liquid.” (emphasis in original).

Appellant had argued in the Appeal Brief at page 20, lines 6-8, that: “That is, the structure of Larkin’s device does not include any medicament in these regions, and it does not appear that it would even be possible to place medicament in these regions.”

Appellant maintains the argument that, in Larkin’s Fig. 5, “the seal between walls 15 and 35 and the seal between walls 18 and 37 remain intact, and the regions between these walls do not open up to the secondary container 34 and the primary container 14 when the contents of those containers are mixed” (Appeal Brief, page 20, lines 4-6). Larkin shows the method for manufacturing the container in column 3 under the heading of “Fabrication.” According to the method, the medicament CANNOT be supplied to the region between walls 18 and 37, and walls 15 and 36. In other words, the regions between these walls **do not open up**, and therefore, there would be no point in placing medicament in these chambers, **since the medicament would not be released** when Larkin’s device is used. Therefore, even if this region of Larkin is considered “capable” of containing a liquid, there is no motivation to modify Larkin to contain a liquid here.

Summary:

Appellant therefore maintains the arguments presented in the Appeal Brief, and submits that the appealed claims are not anticipated by and non-obvious over the cited references.

Reply Brief
NAGAO, Katsuyoshi, et al.

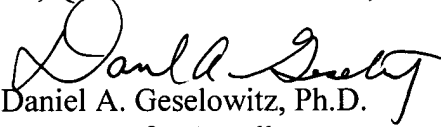
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Appellant respectfully asserts that none of the remarks in the Examiner's Answer demonstrates an error in Appellant's interpretation of the references or in the reasoning as to why the pending claims are not anticipated by and non-obvious over the cited references, as originally presented in the Appeal Brief. Again, Appellant respectfully submits that no new issue is raised in this Reply Brief.

In the event this paper is not timely filed, Appellant hereby petitions for an appropriate extension of time. The fee for any such extension may be charged to our Deposit Account No. 01-2340, along with out other additional fees which may be required with respect to this paper.

Respectfully submitted,

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